

1           IN THE UNITED STATES DISTRICT COURT  
2           FOR THE EASTERN DISTRICT OF TENNESSEE  
3           NORTHERN DIVISION, AT KNOXVILLE, TENNESSEE

4           United States of America,

5           Government,

6           Vs.

7           Donald Reynolds, Nathaniel Smith,

8           Defendants,

9           : CR  
10           : 3-08-143

11           Transcript of proceedings before the Honorable  
12           C. Clifford Shirley on December 5, 2008.

13 APPEARANCES:

14           ON BEHALF OF THE GOVERNMENT:

15           Tracee Plowell  
16           Assistant U.S. Attorney

17           ON BEHALF OF THE DEFENDANT:

18           Donald Bosch  
19           Ann C. Short-Bowers  
20           Paula Voss  
21           Attorneys at Law

22           Jolene Owen, R.P.R.  
23           800 Market Street, Suite 131  
24           P.O. Box 2201  
25           Knoxville, Tennessee, 37901  
             (865) 384-6585

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4 Tracee Plowell is here on behalf of the  
5 government. Is the government present and ready to  
6 proceed?

7 MS. PLOWELL: Present and ready.

11 MR. BOSH: Present and ready, Your Honor.

15 MS. VOSS: Present and ready, Your Honor.

16 THE COURT: All right. Let see if we are  
17 all singing off the same song sheet for this morning. I  
18 am showing that we need to re-arraign both the  
19 defendants with regard to the superseding indictment.  
00:00:56 20 That we need to take up the motion for continuance of  
21 the trial date, and, most likely, set a new trial date.  
22 That we need to set a new at least one motion deadline.  
23 I am actually thinking we probably need to set two  
24 motion deadlines, one for discovery which I think has  
25 already been filed, but a response deadline, and then a

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2                   regular motion deadline and a response deadline. Also a  
3                   motion hearing with regard to those various motions, and  
4                   then set a pretrial conference date.

5                   MS. PLOWELL: That is correct, Your Honor.

6                   MR. BOSH: I believe that is correct.

7                   THE COURT: Everybody believe that is kind  
8                   of what we are doing this morning?

9                   All right. Let's go ahead and take up the  
00:01:58 10                  re-arraignments first. Let's start with Mr. Smith. Is  
11                  that okay?

12                  MS. VOSS: That's okay, Your Honor.

13                  THE COURT: Mr. Smith, you want to come up  
14                  to the podium with Ms. Voss, please.

15                  NATHANIEL SMITH

16                  was first duly sworn and testified as follows:

17                  THE COURT: All right. You are Nathaniel  
18                  Smith, Jr.?

19                  MR. SMITH: Yes, sir.

00:02:22 20                  THE COURT: All right, Mr. Smith, you  
21                  remember when you were here before I went over the  
22                  charges against you?

23                  MR. SMITH: Yes, sir.

24                  THE COURT: That were in the original  
25                  indictment.

                        MR. SMITH: Yes, sir.

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1                   THE COURT: You understand that there has  
2 been a new superseding indictment that has been issued?

3                   MR. SMITH: Yes, sir.

4                   THE COURT: Okay. I am going to go over  
5 that in just a second. I want you to understand, first  
6 you still have all of the same rights I advised you of  
7 the first time you were here. Do you remember that?

8                   MR. SMITH: Yes.

9                   THE COURT: Which includes primarily the  
00:02:48 10 right to remain silent, not make any statements or  
11 comments about any of these charges to anybody. Do you  
12 understand that?

13                  MR. SMITH: Yes, sir.

14                  THE COURT: All right. You also have the  
15 right to be represented by counsel. Ms. Voss has been  
16 representing you and continues to represent you, is that  
17 correct?

18                  MR. SMITH: Yes, sir.

19                  THE COURT: Now, Ms. Plowell, if you will  
00:03:06 20 follow along with me and Ms. Voss, here is what I think  
21 I have noticed to be the difference in the two  
22 indictments. The Count 1 is the same as the old Count 1  
23 with the exception of the length of time and the amount  
24 of kilograms of marijuana.

25                  MS. PLOWELL: That is correct, Your Honor.

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1                   THE COURT: Count 2, as to Mr. Smith, is  
2 new. Count 3 is new. Count 11, I think, is the old  
3 Count 2.

4                   MS. PLOWELL: That is correct, Your Honor.

5                   THE COURT: Is that what you all are --

6                   MS. VOSS: Yes, Your Honor, I think that  
7 is correct.

8                   MS. PLOWELL: Your Honor, there are  
9 additional forfeiture allegations. That is a difference  
00:04:00 10 as well.

11                  THE COURT: Thank you. Those are worth  
12 pointing out, but he doesn't have to plead to those.

13                  All right. Then I will go over those.

14                  Let me ask before I do. Mr. Smith, have  
15 you had a chance to see the new superseding indictment?

16                  MR. SMITH: Yes.

17                  THE COURT: Have you had a chance to talk  
18 with Ms. Voss about it?

19                  MR. SMITH: A little, yes.

00:04:22 20                  THE COURT: You feel like you understand  
21 what you are being charged with now?

22                  MR. SMITH: Yes.

23                  THE COURT: Okay. I need to kind of  
24 assure myself that you do. Let me tell you what I think  
25 you are being charged with, as I look over it.

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1                   Count 1 is the same as the drug conspiracy  
2 charge that was issued against you originally in the  
3 sense that it charges you and Mr. Reynolds with a  
4 conspiracy to distribute cocaine and marijuana.

5                   Now, what is different is that, whereas,  
6 that original indictment only charged you over the  
7 period of a little over a year, year and a half, now the  
8 conspiracy is alleged to have run from the spring  
9 of 2000 continuing to and around June 19th, 2008. Now  
00:05:18 10 it is a seven and a half year conspiracy. Do you  
11 understand that difference?

12                  MR. SMITH: Yes.

13                  THE COURT: The other difference is that  
14 the original indictment charged you with distribution  
15 and possession with intent to distribute five-kilograms  
16 or more of cocaine and 50-kilograms or more of  
17 marijuana. The new one charges you with the same five  
18 kilograms or more of cocaine, but the amount of  
19 marijuana has been increased to a thousand kilograms.

00:05:52 20 Do you understand that difference?

21                  MR. SMITH: Yes.

22                  THE COURT: Okay. Now, the other new  
23 count, or the next new count, Count 2, charges you alone  
24 in December, 2006, with possession with intent to  
25 distribute 50-kilograms of marijuana. Do you understand

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1 that?

2 MR. SMITH: Yes.

3 THE COURT: Count 3 is a new count as  
4 well. It charges you with possessing a firearm during  
5 and in relation to that drug trafficking crime in  
6 Count 2. Do you understand that?

7 MR. SMITH: Yes.

8 THE COURT: Now, you are not charged in  
9 counts 4 through 10. You are charged in Count 11, and  
00:06:40 10 Count 11 is the old Count 2 which charged you with a  
11 money laundering conspiracy, a conspiracy to commit  
12 money laundering with Mr. Reynolds. It is basically the  
13 same as the old Count 2 with the exception again of the  
14 time difference. Instead of being a year and a half  
15 conspiracy it's now a seven and a half year conspiracy.

16 Do you understand that change?

17 MR. SMITH: Yes.

18 THE COURT: Okay. There are also some  
19 additions to the money laundering forfeitures, I believe  
00:07:16 20 both sets of forfeitures and those you don't need to  
21 plead to, but you need to be aware of those.

22 Ms. Plowell, with regard to these charges  
23 because at least to some extent the potential penalties  
24 he could receive have changed, if you would, if you  
25 would go over Counts 1, 2, 3, and 11 with regard to

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1 those, please, ma'am.

2 MS. PLOWELL: As to Count 1 the defendant  
3 faces a mandatory minimum term of ten years imprisonment  
4 and up to life, a \$4 million fine, or both in the  
5 court's discretion, a minimum period of five years of  
6 post-release supervision up to life and \$100 mandatory  
7 special assessment fee.

8 As to Count 3, I am sorry, 2, the  
9 defendant faces a maximum period of five years in  
00:08:12 10 prison, \$250,000 fine, or both in the court's  
11 discretion, maximum period of two years of -- I am  
12 sorry, minimum period of two years of post release  
13 supervision and a \$100 special assessment fee.

14 As to Count 3 the defendant faces a  
15 mandatory minimum term of five years in prison and up to  
16 life, a \$250,000 fine or both in the court's discretion,  
17 a maximum period of five years of post-release  
18 supervision and a \$100 mandatory special assessment fee.  
19 In addition, any term of imprisonment imposed on Count 3  
00:08:40 20 must be served consecutively to any undischarged term of  
21 imprisonment.

22 And as to Count 11, the defendant faces a  
23 maximum term of 20 years in prison, a fine of \$500,000  
24 or twice the value of the property involved, whichever  
25 is greater, five years of post-release supervision and a

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1 \$100 mandatory special assessment fee.

2 THE COURT: Okay.

3 Now, Ms. Voss, do you believe Mr. Smith  
4 understands what he is being charged with in the new  
5 superseding indictment?

6 MS. VOSS: Yes, sir, I do.

7 THE COURT: Do you feel like you have had  
8 adequate time to explain it to him?

9 MS. VOSS: Briefly, but I think it was  
00:09:14 10 adequate.

11 THE COURT: Do you believe the summary I  
12 gave with regard to the changes and what the current  
13 charges are was adequate?

14 MS. VOSS: Yes, Your Honor.

15 THE COURT: And you believe he is  
16 competent to enter a plea today?

17 MS. VOSS: I do, Your Honor.

18 THE COURT: Mr. Smith, with regard to  
19 Count 1 of the superseding indictment, how to you plead?

00:09:30 20 MR. SMITH: Not guilty.

21 THE COURT: Count 2.

22 MR. SMITH: Not guilty.

23 THE COURT: Count 3?

24 MR. SMITH: Not guilty.

25 THE COURT: Count 11?

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1 MR. SMITH: Not guilty.

2 THE COURT: All right. You two may have a  
3 seat.

4 All right, Mr. Bosh, if you will bring  
5 Mr. Reynolds up.

6 Swear in Reynolds, please.

7 DONALD R. REYNOLDS

8 was first duly sworn and testified as follows:

9 COURTROOM DEPUTY: Please state your full  
00:10:00 10 name for the record.

11 MR. REYNOLDS: Donald Ray Reynolds.

12 THE COURT: Mr. Reynolds, Mr. Bosh, yours  
13 is a little bit the same drill, but it's a little more  
14 complicated with regard to the new and changed charges  
15 and counts in the indictment.

16 Again, Mr. Reynolds, you understand that  
17 you have the same rights that you had when you were here  
18 before. That is, you have the right to remain silent,  
19 not incriminate yourself and not make any statements or  
00:10:28 20 comments regarding any of these charges. You understand  
21 that?

22 MR. REYNOLDS: Yes.

23 THE COURT: If you give up that right and  
24 start making any statements, those could be used against  
25 you. You understand that?

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1 MR. REYNOLDS: Yes.

2 THE COURT: All right. You are still  
3 represented by Mr. Bosh, is that correct?

4 MR. REYNOLDS: Correct.

5 THE COURT: All right. Now, it looks to  
6 me like Count 1 remains the same with regard to  
7 Mr. Reynolds except for the changes I mentioned relative  
8 to Mr. Smith, that is, the number of kilograms of  
9 marijuana and the date of the conspiracy. It looks like  
00:11:14 10 Counts 2 and 3 do not apply to Mr. Reynolds. Count 4 is  
11 a new drug trafficking crime charge and then Count 5 is  
12 the old Count 3. Count 6 is the old Count 4. Count 7,  
13 8, 9, 10 are new. I guess each one being a drug charge  
14 and then a drug trafficking with a weapon charge, and  
15 then Count 11 is the old Count 2. Is that sort of the  
16 way you all see it?

17 MR. BOSH: Close. I think Count 4 is  
18 actually a firearms charge in furtherance of drug  
19 trafficking. I think you announced it just as a drug  
00:12:04 20 trafficking crime.

21 THE COURT: Okay, right.

22 MR. BOSH: A 924(c), Your Honor.

23 THE COURT: Right. All right. Let's, let  
24 me ask this of you, Mr. Reynolds, have you had a chance  
25 to see and read the new superseding indictment?

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1 MR. REYNOLDS: Yes.

2 THE COURT: Have you had a chance to go  
3 over it with Mr. Bosh?

4 MR. REYNOLDS: Yes.

5 THE COURT: You feel like you understand  
6 what you are being charged with?

7 MR. REYNOLDS: Yes.

8 THE COURT: All right. I am going to go  
9 over them with you real quickly. Count 1 still charges  
00:12:32 10 you with a drug conspiracy. That is a conspiracy to  
11 distribute and possess with intent to distribute  
12 five-kilograms or more of cocaine, but now the amount of  
13 marijuana has been increased to a thousand kilograms.  
14 The date of the conspiracy has been changed and is now  
15 from spring of 2000 to June of 2008. Do you understand  
16 that?

17 MR. REYNOLDS: Yes, sir.

18 THE COURT: And Counts 2 and 3, as I  
19 mentioned, do not apply to you. They apply only to  
00:13:04 20 Mr. Smith. Count 4 now charges you with possession of a  
21 firearm in furtherance of the drug trafficking crime in  
22 Count 1. Do you understand that?

23 MR. REYNOLDS: Yes, sir.

24 THE COURT: And actually that is only  
25 limited though to December 6th -- December of 2006,

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1 excuse me. You understand that?

2 MR. REYNOLDS: Yes.

3 THE COURT: Okay. Count 5 then is new,  
4 which is the old Count 3 in the original indictment, and  
5 it charges you in January of '07 with possession with  
6 intent to distribute five-kilograms or more of cocaine.

7 Do you understand that?

8 MR. REYNOLDS: Yes.

9 THE COURT: Count 6 is the old Count 4  
00:13:56 10 which charges you in January of '07 with possession of a  
11 firearm in furtherance of that drug trafficking crime in  
12 2007. Do you understand that?

13 MR. REYNOLDS: Yes.

14 THE COURT: In other words, Count 5  
15 charges you with a drug trafficking crime. Count 6  
16 charges you with possession of a gun in furtherance of  
17 that drug trafficking crime and it specifically sets out  
18 those firearms are a Tec 9 and a Glock pistol. You  
19 understand that?

00:14:24 20 MR. REYNOLDS: Yes.

21 THE COURT: All right. Then count 7 is a  
22 new count. It charges you with possession with intent  
23 to distribute five kilograms or more of cocaine in or  
24 about the summer of 2007. You understand that?

25 MR. REYNOLDS: Yes.

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1                   THE COURT: Count 8 then charges you with  
2 possession of a firearm in furtherance of that drug  
3 trafficking crime. That is the one in the summer  
4 of 2007. Do you understand that?

5                   MR. REYNOLDS: Yes.

6                   THE COURT: And the firearm there is a  
7 7.62 .30 caliber rifle. You understand that?

8                   MR. REYNOLDS: Yes, sir.

9                   THE COURT: All right. Count 9 is also  
00:15:04 10 new. It charges you again with possession with intent  
11 to distribute five-kilograms or more of cocaine in  
12 February of 2008. You understand that?

13                  MR. REYNOLDS: Yes.

14                  THE COURT: Then Count 10 charges you with  
15 possession of a firearm in furtherance of that drug  
16 trafficking crime. That is the one in February of 2008.  
17 This time with a rifle, an FNH 5.7 x .28 millimeter  
18 rifle. You understand that?

19                  MR. REYNOLDS: Yes, sir.

00:15:38 20                  THE COURT: And then Count 11 is the old  
21 Count 2 from the original indictment. It charges you  
22 with conspiracy to money launder along with Mr. Smith.  
23 It's essentially the same charge with the exception of  
24 the dates of the conspiracy again being extended to the  
25 spring of 2000 to June of 2008. Do you understand that?

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1 MR. REYNOLDS: Yes, sir.

2 THE COURT: Do you feel like you  
3 understand both the changes between the original  
4 indictment and the superseding indictment and what you  
5 are being charged with now?

6 MR. REYNOLDS: Yes.

7 THE COURT: All right. Mr. Bosh, do you  
8 feel like he does understand what he is being charged  
9 with?

00:16:18 10 MR. BOSH: I do, Your Honor.

11 THE COURT: Do you feel like he is  
12 competent to enter a plea?

13 MR. BOSH: I do.

14 THE COURT: Ms. Plowell, if you would, I  
15 know Count 1 would remain the same, I assume, as to  
16 Mr. Reynolds?

17 MS. PLOWELL: Yes.

18 THE COURT: If you could, if you could  
19 quickly advise him as to the other charges and what the  
00:16:38 20 potential penalties are.

21 MS. PLOWELL: Yes, Your Honor. As to  
22 Count 4, the defendant faces a mandatory minimum term of  
23 five years and up to life in prison, \$250,000 fine, or  
24 both in the court's discretion, five years of  
25 post-release supervision and a \$100 mandatory special

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1 assessment fee. In addition, any term of imprisonment  
2 imposed on Count 4 must be served consecutively to any  
3 undischarged term of imprisonment.

4 MR. REYNOLDS: As to Count 5, the  
5 defendant faces the same penalties as set forth in  
6 Count 1.

7 As to Count 6, the defendant faces a  
8 mandatory minimum term of 25 years in prison and up to  
9 life, \$250,000 fine, or both in the court's discretion,  
00:17:16 10 five years post-release supervision and a \$100 mandatory  
11 special assessment fee. In addition, any term of  
12 imprisonment imposed on Count 6 must be served  
13 consecutively to any undischarged term of imprisonment.

14 As to Count 7, the defendant faces the  
15 same penalties as set forth in Count 1 of the  
16 indictment.

17 As to Count 8, the defendant faces the  
18 same penalties as set forth in Count 6 of the  
19 indictment. Again that term of imprisonment must be  
00:17:44 20 served consecutively to any undischarged term of  
21 imprisonment.

22 Count 9, the defendant faces the same  
23 penalties as to Count 1 of the indictment.

24 As to Count 10, the defendant faces the  
25 same penalties as set forth in Count 6 of the

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1 indictment, and again that is consecutive.

2 As to Count 11, the defendant faces a fine  
3 of \$500,000 or twice the value of the property,  
4 whichever is greater, and a maximum term of 20 years in  
5 prison, five years of post-release supervision and \$500  
6 mandatory special assessment fee.

7 THE COURT: All right. You understand the  
8 maximum potential penalties you could be facing?

9 MR. REYNOLDS: Yes.

00:18:24 10 THE COURT: All right. You believe he is  
11 ready to enter a plea, Mr. Bosh?

12 MR. BOSH: Your Honor, I do.

13 THE COURT: With regard to Count 1,  
14 Mr. Reynolds, how to you plead?

15 MR. REYNOLDS: Not guilty.

16 THE COURT: Count 4?

17 MR. REYNOLDS: Not guilty.

18 THE COURT: Count 5?

19 MR. REYNOLDS: Not guilty.

00:18:36 20 THE COURT: 6?

21 MR. REYNOLDS: Not guilty.

22 THE COURT: 7?

23 MR. REYNOLDS: Not guilty.

24 THE COURT: 8?

25 MR. REYNOLDS: Not guilty.

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1 THE COURT: 9?

2 MR. REYNOLDS: Not guilty.

3 THE COURT: 10?

4 MR. REYNOLDS: Not guilty.

5 THE COURT: 11?

6 MR. REYNOLDS: Not guilty.

7 THE COURT: Have a seat.

8 All right. There is currently pending a  
9 motion for a new trial. I believe Ms. Voss filed one  
00:19:06 10 and I believe Mr. Bosh file one. I take it you have  
11 both discussed that with your clients.

12 MR. BOSH: We have, Your Honor.

13 MS. VOSS: Yes, sir.

14 THE COURT: Do they have any objections to  
15 the continuance? Mr. Smith?

16 MR. SMITH: No.

17 THE COURT: Mr. Reynolds?

18 MR. BOSH: Your Honor, if I may.

19 THE COURT: Sure.

00:19:32 20 MR. BOSH: We set this out in our motion.  
21 This is the dilemma that we have. We have been placed  
22 in a situation based on difficulties with discovery that  
23 Mr. Reynolds is forced to choose between his rights to a  
24 speedy trial and his right to effective assistance. It  
25 is with great reluctance that this motion is filed

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1 because, as we indicated very early in this case, in  
2 fact, pre-indictment once it was determined there would  
3 be no agreement reached in this case, that we were ready  
4 to go to trial as quickly as possible. That was  
5 expressed again at the initial appearance and  
6 arraignment.

7 That said, as we discussed with  
8 Mr. Reynolds, there is no choice put to file this motion  
9 at this point. Mr. Reynolds' hesitation this morning is  
00:20:22 10 over, he finds this, frankly, as distasteful as we do.  
11 That said, I will let the court further inquire of  
12 Mr. Reynolds. With reluctance we have no objection to  
13 the continuance of this trial. We'll stand on our  
14 motion.

15 THE COURT: All right. You want to add  
16 anything to that, Mr. Reynolds?

17 MR. REYNOLDS: No, sir.

18 THE COURT: Okay.

19 MR. BOSH: Your Honor, if I can put one  
00:20:58 20 more thing on the record. The motion to continue was  
21 filed prior to the superseding indictment. I think that  
22 is relevant and could be relevant later.

23 THE COURT: Well, obviously, this is Judge  
24 Guyton's case. He'll need to make most of the  
25 decisions. In looking at Ms. Voss' motion, it looks

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1 like the primary problem is the voluminous nature of the  
2 discovery, but in hearing from you, Mr. Bosh, and  
3 looking at your motion it looks like there is an issue  
4 with discovery.

5 MR. BOSH: Well, there is certainly  
6 volume. We don't dispute that. There are issues about  
7 designation of the volume of that discovery. Those are  
8 contained at least anecdotally in a motion to continue,  
9 and, more importantly, contained in a motion filed  
00:21:56 10 yesterday that would not be appropriate to address today  
11 simply because the government has just had notice of it  
12 and they are entitled to their notice. That said, it  
13 was our hope under the original indictment, and,  
14 frankly, under the new indictment that we could resolve  
15 those discovery issues prior to December 16th and go  
16 forward. That is simply not going to happen at this  
17 point.

18 THE COURT: Ms. Voss.

19 MS. VOSS: Our motion was simply a motion  
00:22:22 20 for additional time. We may well join in the current  
21 motion that Mr. Bosh has before the court. The issues  
22 are not exactly the same with Mr. Smith. There are some  
23 issues with some of these now that the superseding has  
24 expanded the time period, some of those issues may be  
25 more relevant to him. At this point although we had not

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1 filed a motion for continuance and our reluctance is the  
2 same as Mr. Reynolds, I think Mr. Bosh is correct that  
3 without that information we can't adequately represent  
4 these gentlemen. I think there are some issues yet to  
5 be resolved with regard to discovery. I think we are  
6 going to keep that court date in December for that  
7 motion hearing. I think we have set a date in December  
8 for those motions that are currently pending.

9 THE COURT: All right. It would seem to  
00:23:24 10 me, and I am not going to take the position either way  
11 with regard to discovery, obviously. That will be for  
12 Judge Guyton to do. I would think that with all of the  
13 new charges against Mr. Reynolds, that alone would  
14 probably constitute a pretty good reason for a  
15 continuance. Maybe you wouldn't want one. Going from a  
16 few count indictment to eleven, I would think that would  
17 suffice.

18 In any event, you filed a motion for a  
19 continuance, Mr. Smith has. Does the government have  
00:24:00 20 any objection?

21 MS. PLOWELL: The filed motion to  
22 continue, we have no objection, Your Honor.

23 THE COURT: The court will grant both  
24 motions for a continuance. Whether the issue is the  
25 nature and extent of the discovery, whether it is the

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1 designation of the discovery or whether there are issues  
2 with regard to discovery that has not yet been produced,  
3 it is clear that the parties need additional time to  
4 sort out exactly what is out there, what may be used at  
5 trial and they have filed motions with regard to  
6 discovery which is going to be heard. That needs to be  
7 heard and ruled on. In addition, there are new counts  
8 against both defendants which are substantial, both in  
9 the nature of the charge and the potential punishment  
00:25:06 10 associated with them which needs additional perhaps  
11 discovery and certainly preparation to defend.

12                   The parties have indicated they want  
13 additional time to file other motions which will require  
14 time for the government to respond and the court to have  
15 another hearing and rule on those. I really don't  
16 believe that the matter can be set for trial any time  
17 prior to April. Would you agree with that, Mr. Bosh?

18                   MR. BOSH: I would agree the only  
19 available dates are April. We would be ready much  
00:25:42 20 earlier than that, but the government and the courts  
21 have indicated there are no dates that all parties have  
22 a match on prior to April 6th.

23                   THE COURT: I don't see how you can get  
24 all this done before that, if I give you what I  
25 understand you want, a motion deadline sometime out in

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1 January.

2 MR. BOSH: No, Your Honor. I think those  
3 were being set in response to the April 6th date which  
4 was the first match that all parties could get. I will  
5 go on the record to indicate that we on behalf of  
6 Mr. Reynolds, we had dates available in December,  
7 January, February, March and April.

8 THE COURT: Well, I appreciate that. Are  
9 you saying you want to try the case in December and have  
00:26:32 10 motions heard in January?

11 MR. BOSH: No, Your Honor.

12 THE COURT: I am trying to -- I am not  
13 following how you can have your cake and eat it too.  
14 How can you have motion hearings set or extend the  
15 motion deadline and not extend the trial date?

16 MR. BOSH: Your Honor, when the motion to  
17 continue was filed, as we indicated, the superseding  
18 indictment had not been filed. The court is correct  
19 that it does at least at some level change the  
00:26:56 20 landscape. However, I will add, no new defendants were  
21 added to this and essentially, although as the court  
22 accurately pointed out, the penalties and the scope have  
23 changed, none of this is new news to Mr. Reynolds. That  
24 said, the court is correct. We're looking at a January  
25 date. Our hope initially was that we could resolve

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1 discovery disputes, go forward on December 16th. That  
2 has not occurred. We are left with the court setting  
3 new motion dates in January, assuming that April 6th  
4 trial date, that their are motion dates in January and  
5 February subject to the court's calendar and again  
6 setting the discovery issue on December 18th at  
7 2:00 p.m. I think was discussed before Your Honor took  
8 the bench.

9 THE COURT: All right. The reason I say  
00:27:46 10 that is, you know, I have been in a number of cases.  
11 Again I am probably going too far into this case where I  
12 don't need to. You know, when defendants are insistent  
13 on maintaining trial dates or early trial dates, I have  
14 been pushing the government to require them to produce  
15 things. Unfortunately, sometimes the result has been  
16 then the defendants say now we are really not ready.  
17 Now we want to have more motions filed and we want you  
18 to rule on those and we need more time to prepare and  
19 what that ultimately results in is the defendant getting  
00:28:24 20 a much later trial date.

21 In other words, suppose I give you a  
22 January trial date and I force Ms. Plowell to produce  
23 everything you want and then you want to file some  
24 motions to suppress it or keep it out, or any kind of  
25 motion. Then it becomes impossible to have a hearing,

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1 rule on it and allow you preparation time and then we  
2 have to continue it. Now we are looking at June and  
3 July because there are no more April dates at that  
4 point. In trying to accommodate some of those requests,  
5 what ultimately has happened is just the reverse. What  
6 I have tried to do is find the most reasonable date and  
7 a date that matches everybody's calendar, but a most  
8 reasonable time frame to get everything accomplished  
9 without everybody coming in then and saying well, this  
00:29:18 10 hasn't been enough time.

11 It seems to me that an April time frame  
12 looks like a reasonable time frame to resolve all of the  
13 matters and allow everybody time then to prepare for  
14 trial after the motions have been resolved.

15 I understand your client's position with  
16 regard to wanting an earlier trial date.

17 Ms. Voss, you want to add anything?

18 MS. VOSS: No, Your Honor. I believe that  
19 covers it. Again, I do agree with Mr. Bosh we are  
00:29:50 20 somewhat reluctant, but I don't think we have a choice  
21 at this point. I would like a new motion date as well.

22 THE COURT: All right. I am going to not  
23 only continue the trial date to April 6th, I am going to  
24 find that all of the time between now and then is fully  
25 excludable for speedy trial purposes.

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1                       Okay, the motion, discovery motion has  
2 been filed and you are going to have that hearing on  
3 December 18th, 2:00 in front of Judge Guyton, is that  
4 right?

5                       MR. REYNOLDS: Yes, Your Honor.

6                       THE COURT: When will you get your  
7 responses?

8                       MS. PLOWELL: Your Honor, can I have --

9                       THE COURT: When were they filed,  
00:30:50 10 yesterday?

11                      MR. BOSH: Yesterday, Your Honor.

12                      THE COURT: 14th.

13                      MS. PLOWELL: May I actually have the 15th  
14 or 16th. I know that doesn't give Judge Guyton much  
15 time. I am in trial next week.

16                      THE COURT: The 15th will be fine. The  
17 14th is actually a Sunday.

18                      Then the remaining motions deadline. How  
19 much time are you thinking, Ms. Voss?

00:31:26 20                    MR. BOSH: Your Honor, that is frankly  
21 going to be contingent on complete discovery. That is  
22 what the problem is. I think what we need to do now --  
23 I might make a suggestion. We have this hearing on  
24 December 18th with Judge Guyton. Clearly given the  
25 trial dates, there is no expectation that discovery will

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1 be fully provided on or before December 18th, as much as  
2 we might like that. We might want to let Judge Guyton  
3 address that in terms of what happens to that motion on  
4 the 18th in terms of setting any discovery cutoffs  
5 and/or any sanctions that we request, if those would be  
6 appropriate.

7 THE COURT: What do you think?

8 MS. VOSS: We can do it either way. We  
9 can wait until the 18th or we can go ahead and set a  
00:32:14 10 motion cut off maybe the first week of January and  
11 revisit it on that date, either one.

12 MR. BOSH: That is fine as well. That way  
13 if Judge Guyton needs to adjust it, he can.

14 MS. VOSS: I just don't think  
15 realistically with the holiday coming up and that 18th  
16 date which would be the first time we have to address  
17 the discovery issues, that we can do it before the first  
18 week of January.

19 THE COURT: Ms. Plowell, without asking  
00:32:36 20 you to divulge more than you need to or want to, do you  
21 think that the status on discovery is going to change  
22 much between now and the 18th?

23 MS. PLOWELL: Well, Your Honor, I don't  
24 want to go too far into it. I have always -- probably  
25 do need to make a record. I have always tried to

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1 resolve discovery issues between the parties without  
2 bringing the court into it. Unfortunately in this case  
3 I don't believe that is going to be possible. Although  
4 I am not sure why. I will endeavor to address, I have  
5 endeavored to address, I have had several meetings  
6 informal meetings, with defendant Reynolds' counsel and  
7 I have spoken informally with defendant Smith's counsel  
8 about the discovery and I think the greatest issue here  
9 is, Your Honor, is the volume of the discovery. There  
00:33:32 10 is about 5,000 pages of discovery. A lot of it is  
11 financial records and I am at the mercy, unfortunately,  
12 of the financial institutions and they are doing the  
13 best they can. However, a lot of the, the timing of  
14 this with what is going on in our economy right now,  
15 they are getting subpoenas and responses from a lot of  
16 other places other than this court, that are needed  
17 other than for this court. They are working as fast as  
18 they can and as expeditiously as they can. We are  
19 turning them over as expeditiously as we can in trying  
00:34:12 20 to keep them in some semblance of an organized, some  
21 form of organization.

22 I am hopeful that I will have things by  
23 the 18th, Your Honor, the remainder of the discovery  
24 with regard to the indictment, but I honestly cannot  
25 say. What I have been doing is as I receive items I

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1 have been turning them over, as I always do. Your  
2 Honor, if we can have, I suppose if we want to have a  
3 hearing on the 18th and I will set forth and try to  
4 discuss in between now and that date those issues with  
5 the parties and hope to resolve those issues in  
6 accordance with how the court's Order on Discovery and  
7 Scheduling instructs us to do so.

8 If we could, Your Honor, address any  
9 motion deadlines and have Judge Guyton set those on the  
00:35:14 10 18th, I think that might be better.

11 THE COURT: All right. I do think that in  
12 this it situation -- Mr. Bosh.

13 MR. BOSH: Your Honor, like Ms. Plowell, I  
14 did not want to descend into this discovery dispute this  
15 morning. I think it is imperative I make a very brief  
16 response. I can assure you Ms. Short and I on behalf  
17 Mr. Reynolds have gone well beyond any ordinary effort  
18 to try to resolve these things prior to embroiling the  
19 court. We have set that out in our motion. For a  
00:35:50 20 suggestion from the government that they don't  
21 understand why we are embroiling the court, it is a bit  
22 remarkable this morning.

23 THE COURT: I will let Judge Guyton handle  
24 that. I understand what you are saying. I have read  
25 your motion. What I always try to figure out is one of

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1 three things. Is it an issue that there is a discovery,  
2 genuine discovery dispute, that is, the government says  
3 you are not entitled to have this and you say, yes, we  
4 are. Nothing is going to change until I rule. No  
5 amount of negotiation is going to change that.

6 Sometimes it is yes, there is a huge  
7 volume, I am getting it to you as quick as I can. There  
8 is no issue about what you are entitled to, I just can't  
9 get it to you fast enough.

00:36:36 10 Third, is sometimes there is third-party  
11 problems. Now, technically for me that is the easiest  
12 one to handle because I can make them produce them. You  
13 may not. I can take care of that problem pretty  
14 quickly. Sometimes we have agency problems, sometimes  
15 we have third-party problems. It's important to  
16 identify where the problem is because there is, that is  
17 why I asked. There is no sense in setting out a  
18 discovery dispute where there is a legal loggerhead  
19 because it's not going to change between now and then.  
00:37:10 20 I found if I give the government and defense lawyers a  
21 little time to work out issues with regard to volume or  
22 arrangements or things like that, most of the time it  
23 can resolve itself. I am thinking in this case it may  
24 be a little bit of second. I think there is probably  
25 more of the first.

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1                   MR. BOSH: It may be all three, Your  
2 Honor, to be candid with the court.

3                   THE COURT: I think there is going to be  
4 some disputes as to what you are entitled to.

5                   MS. PLOWELL: No, Your Honor, it's not an  
6 issue of what they are entitled to at all.

7                   THE COURT: Are you going to tell them  
8 what you are going to use off the computer?

9                   MS. PLOWELL: We have given them almost a  
00:37:46 10 complete duplicate of everything we have in our file. I  
11 don't think it's much of a number 1 as it is a number 2  
12 and 3.

13                  THE COURT: Okay.

14                  MR. BOSH: Again I think we'll address  
15 that on the 18th.

16                  MS. PLOWELL: We can discuss that prior to  
17 coming in court.

18                  MR. BOSH: We can discuss that prior, as  
19 we have been trying to do.

00:38:02 20                  THE COURT: Well, the 18th is short enough  
21 that --

22                  MS. PLOWELL: Your Honor, there is one  
23 issue I do have to address. I am sorry. I know we are  
24 not going to go into it, but counsel did put in the  
25 motion and hinted today that they have made

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1 arrangements, that they have tried to make efforts to  
2 contact the government and it has been to no avail. I  
3 would say, Your Honor, that I did receive a voicemail on  
4 the 2nd. I didn't receive it until late in the evening  
5 the 2nd. I was in meetings all day on the 2nd, when I  
6 had just come back. I didn't get the message until late  
7 in the evening. The message was I would like to meet  
8 with you at three today. If I don't receive the message  
9 until seven or eight in the evening, when I check my  
00:38:40 10 voicemail -- everyone has my cellphone. I give it out  
11 freely on my voicemail. My cellphone wasn't called to  
12 ask to have that meeting. Between now and then -- that  
13 could be because my cellphone was full. I know it had  
14 been full for a little while because I was out of town.

15 I have been getting ready for trial in the  
16 trial of Bennett, Your Honor. I have had witness  
17 interviews. I could not meet with -- I was physically  
18 unable to meet with counsel prior to this hearing today.  
19 It was not that I was putting it off, Your Honor. I  
00:39:10 20 just physically was unavailable to do so. I did want to  
21 make that clear for the record.

22 MR. BOSH: Not challenging Ms. Plowell's  
23 assertions on that regard, I understand. I think,  
24 frankly, the reasons that the government may not be able  
25 to do these things aren't as relevant as the fact that

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1 they have not been done and Mr. Reynolds has rights. I  
2 know Ms. Plowell has a very busy schedule, as do we.  
3 Nonetheless, we had a trial date of December 16th until  
4 this moment was set and had not been continued. We take  
5 that very seriously.

6 THE COURT: All right. We are going to  
7 just set the trial date for April the 6th. We are going  
8 to set a motion hearing date for December 18th at 2:00.

9 Do I understand you have tentatively  
00:39:56 10 agreed on a pretrial conference date of March 18th at  
11 2:00 as well?

12 MR. BOSH: Yes.

13 THE COURT: We'll put that down. That  
14 might fluctuate or change depending on what Judge Guyton  
15 does. I am sure all of you will remember to bring to  
16 his attention you need a motion date, when he hears you  
17 on the 18th.

18 All right. Anything else we need to take  
19 up with regard to these matters?

00:40:24 20 MS. PLOWELL: Not on behalf of the  
21 government.

22 THE COURT: Anything else on behalf of  
23 Mr. Reynolds?

24 MR. BOSH: No, Your Honor.

25 THE COURT: Anything else on behalf of

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2                   Mr. Smith?

3                   MS. VOSS: No, Your Honor.

4                   THE COURT: We'll stand in recess here. I

5                   have one next door. Everybody who needs to go over  
6                   there will go over there.

7

8                   (Court was recessed.)

9                   I CERTIFY THAT THE FOREGOING IS AN ACCURATE  
10                  TRANSCRIPT OF THE RECORD OF PROCEEDINGS IN THE  
11                  ABOVE-ENTITLED MATTER, THIS THE 8th DAY OF December,  
12                  2008.

13

14                  S/ J. Owen  
15                  JOLENE OWEN.

16                  Registered Professional Reporter

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